SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/29/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000641

FILED: _____

STATE OF ARIZONA

MIKE PARASCANDOLA

v.

MARK ALLAN REDFIELD

MARK ALLAN REDFIELD
PO BOX 646
AVONDALE AZ 85323-0000

GOODYEAR CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

GOODYEAR CITY COURT

Cit. No. #032975

Charge: A. DRIVING ON A SUSPENDED LICENSE (C1M)

DOB: 12/12/49

DOC: 05/29/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on January 8, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Goodyear City Court, the exhibits made of record, and the Memoranda submitted by the parties.

Appellant was convicted of the charge of Driving on A Suspended Driver's License, in violation of A.R.S. Section 28-3473(C), a class 1 misdemeanor offense. Appellant was fined $1,337.50 at the conclusion of his trial, and he has filed a timely Notice of Appeal in this case.

First, Appellant contends that the taped transcript is inaudible in this case. This Court has reviewed the excellent video tape record of the proceedings and find that Appellant's contentions are without merit. This Court has heard several appeals from the Goodyear City Court and finds that the records made by their video tape system are superior to most of the records made by many larger court systems. This Court found specifically in this case that frequently witnesses or parties did not speak into the microphones. However, they were still audible by turning up the volume while viewing the video tapes.

The second issue raised by Appellant concerns the legal justification for the stop of his vehicle on May 29, 2001. Appellee's position is that the arresting officers had a "reasonable" suspicion of criminal activity to justify the stop. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from the facts, reasonably warrant the police officer's suspicion that the accused, committed, or was about to commit, a crime.[1] These facts and inferences when considered as a whole the ("totalilty of the circumstances") must provide "a particularized and objective basis for suspecting the particular

[1] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1988); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

person stopped of criminal activity."[2] A.R.S. Section 13-3883(B) also provides in pertinent part authority for police officers to conduct a "investigative detention":

> A peace officer may stop and detain a person as is reasonable necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.[3] In ***Whren***[4], the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.[5]

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[2] *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed. 2d 621, (1981).
[3] *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).
[4] Id.
[5] Id.

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.[6] An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.[7] This Court must review those factual findings for an abuse of discretion.[8] Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.[9] This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.[10]

The trial judge's ruling denying the Motion to Suppress and Appellant's challenge to the justification for his stop is supported by the record. The police officer testified that Appellant's vehicle's brake-light was not functioning. The police officer also testified that from a previous encounter with Appellant, he knew that Appellant's driver's license had been suspended. And, when he checked on the radio, he found that Appellant's was still suspended. So, having determined a factual basis exists to support the trial court's ruling, this Court also determines *de novo* that these facts do establish a reasonable basis for the police officer to have stopped the automobile driven by the Appellant. The trial court did not error.

Appellant also contends that he was denied his right to a court-appointed attorney. Though not specifically articulated by the Appellant, this Court understands the Defendant's claim to be a denial of his constitutional right to appointed counsel.

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[6] *State v. Gonzalez-Gutierrez*, 1987 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Magner,* Supra.
[7] Id.
[8] *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).
[9] *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.
[10] *State v. Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778; *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

The record in this case is devoid of any evidence that Appellant is indigent. Arizona Rules of Criminal Procedure, Rule 6.1(b) provides:

> An indigent Defendant shall be entitled to have an attorney appointed to represent him or her in any criminal proceedings which may result in punishment by loss of liberty and in any other criminal proceeding in which the court concludes that the interests of justice so require.

The law at the federal level is clear. The United States Supreme Court in *Scott v. Illinois*[11] has held that an indigent Defendant charged with shoplifting was not entitled to a court-appointed attorney even though the possible sentencing range was up to one year imprisonment, but imprisonment was not opposed in that case. This Court is aware of no authority holding that Arizona has standards which exceed the Federal standards regarding appointment of counsel.[12]

In *Campa v. Fleming*[13], Division 2 of the Arizona Court of Appeals held that the Defendant was not entitled to a court-appointed attorney where the Defendant was charged with Shoplifting, a class 1 misdemeanor offense, the prosecutor avowed that no jail time would be requested, and the City Court judge ruled that no jail time could be imposed.

In the instant case, Appellant was fined and not sentenced to any jail time. The trial judge did not error in refusing Appellant's request for a court-appointed attorney.

The remaining issues raised by the Appellant concern the sufficiency of the evidence to warrant his conviction. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach

[11] 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979).
[12] *Campa v. Fleming*, 134 Ariz. 330, 656 P.2d 619 (App. 1982).
[13] Id.

the same conclusion as the original trier of fact.[14] All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.[15] If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.[16] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[17] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[18] The Arizona Supreme Court has explained in *State v. Tison*[19] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[20]

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[14] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey,* 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v.Brown,* 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission,* 94 Ariz. 113, 382 P.2d 226 (1963).

[15] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[16] *State v. Guerra*, supra; *State v. Girdler,* 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

[17] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

[18] *Hutcherson v. City of Phoenix,* 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

[19] SUPRA.

[20] Id. At 553, 633 P.2d at 362.

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This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this matter back to the Goodyear City Court for all further and future proceedings.